

MADISON COUNTY SCHOOL DISTRICT

Address: 210 NE Duval Avenue Madison, Florida 32340 - Phone: 850-973-5022

May 31, 2019

Letter of Appeal/Waiver

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

CC Docket No 02-6

Letter of Appeal/Waiver of "Revised Funding Commitment Decision Letter" regarding FRN 1899084023, issued on May 8, 2019.

Authorized person who can best discuss this Appeal with you

John E. Harvey Jr.
eRate 360 Solutions, LLC
322 Route 46W, Suite 280W
Parsippany, NJ 07054

Phone: (888) 535-7771 ext. 110
Fax: (866) 569-3019
Email: jharvey@erate360.com
(preferred mode of contact)

Application Information

Entity
Billed Entity Number
Funding Year
Form 471 Application Number
Funding Request Number

MADISON COUNTY SCHOOL DISTRICT
127608
FY 2018
181017181
1899084023

Service Provider
SPIN
Funding Pre-Discount Requested

Southeastern Services, Inc.
143026053
\$24,199.36

Document to Be Reviewed

**Revised Funding Commitment Decision Letter
for the FY 2018 FCC Form 471 Application
Number 181017181, dated May 8, 2019¹**

¹ Madison_FY21_471_181017181-DF_FCDL

Decision to be reviewed

Revised Funding Commitment Decision Comments:

DR1: The FCC Form 470 that established the competitive bidding process for this FRN did not include service of this type; therefore, it does not meet the 28-day competitive bidding requirement.

Post Commitment Rationale:

The FRN 1899084023 was denied during Fiber review because Network Equipment was not requested on the FCC Form 470 and RFP that established the competitive bidding process for this FRN. Your appeal did not show that USAC's determination was incorrect. Consequently, your appeal is denied. FCC rules require that all products and services for which an applicant requests discounts on an FCC Form 471 must be competitively bid on an FCC Form 470. The FCC Form 470 must include a complete description of the services for which discounts are sought, be posted on the website for 28 days, and applicants must carefully consider all bids received before selecting a vendor, entering into a legally binding agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). To the extent an applicant seeks construction of a network that the applicant will own, the applicant must also solicit bids for both the services provided over third-party networks and construction of applicant owned network facilities, in the same request for proposals. Similarly, to the extent an applicant seeks bids for special construction associated with dark fiber or bids to lease and light dark fiber, the applicant must also solicit bids to provide the needed services over lit fiber. Additionally, to the extent an applicant seeks bids for equipment and maintenance costs associated with lighting dark fiber, the applicant must include these elements in the same FCC Form 470 as the dark fiber. See C.F.R. secs. 54.503 (c) (iv)-(vi).

BACKGROUND

The FCDL for FRN 1899084023 was issued on 1/11/2019 and approved with modification comments; "MR1: This is a new FRN. It was created in order to change the service type requested on FRN 1899061270 from Data Transmission and/or Internet Access--fiber to Data Transmission and/or Internet Access--switches and OSS in accordance with Program rules." However, it was approved for the wrong Service Provider (SP) - Southeastern Services, Inc. (SSI) which resulted from an M&C error. It should have been United Data Technologies, Inc. (UDT).

The CSB helpdesk informed me that to correct the SP, I would have to appeal the FCDL. An appeal was submitted to USAC on 1/14/2019². The Appeal was to correct the service provider on the FCDL but the appeal included the wrong SPIN for UDT. The correct SP should have been United Data Technologies, Inc. with SPIN 143020605³. An appeal was submitted to replace for UDT (BEN 143020605) as the numbers were almost identical, SSI's # was used for UDT in error on the appeal.

² Madison_FY2018_Appeal Letter to USAC

³ SPIN Contact Search Results-UDT

The Post Commitment Rationale comments are erroneous, as they solely address 470 issues which were not mentioned in the appeal. There being no reason why Southeastern Services was not replaced by UDT.

Ms. Yvie Mondenge an Appeal reviewer called me on 5/8/19, before I received, but on the same day the RFCDL⁴ was issued and sought to explain to me that a particular 'box' indicating 'equipment to light dark fiber' on the Form 470 # 180015891⁵ was not checked, therefore the service requested was not included on the 470 and hence a bidding violation. As far as I am aware, there is no way to validate that there was a box on the form once the 470 has been submitted on the EPC.

This was my very first indication of any possible bidding violation.⁶

To be clear, the appeal was to correct the Service Provider to match supporting documents provided. Form 470 issues were not considered because the FRN was previously approved on the FCDL and it was believed that all forms were properly completed, including the 470. Since this was a Fiber project, great pains were taken to ensure the Form 470 met the stringent requirements of the Erate Program. As Consultant to MCSD I call on my 15 years of experience working with Erate, initially with Solix, the last seven years completing & preparing applications on behalf of School Districts. I'm aware that the Forms have been amended from year to year, but I do not recall seeing a 'box' on the FY2018 Form 470 to indicate that 'equipment to light dark fiber' was a required service.

With this new information from Ms. Mondenge, I immediately referred her to the RFP⁷ that was attached to the Form 470 which, on page 4, under paragraph titled 'Network Equipment for Leased Dark Fiber', clearly includes that equipment to light fiber was a requirement if dark fiber proved to be the selected solution. The fact that this paragraph was clearly indicated as a requirement and the RFP is an integral and indeed mandatory attachment to the 470 when bidding for fiber services, should be sufficient to inform any interested vendor of the services MCSD is seeking. Thereby meeting the requirement – "The FCC Form 470 must include a complete description of the services for which discounts are sought," and hence, we believe, was "competitively bid".

REQUEST FOR WAIVER

It is our opinion that our appeal has not been properly addressed by USAC.

However, if it is found that MCSD did indeed commit a bidding violation for FY 2018, Madison County School District respectfully requests that the Commission waive the ruling that requires the checking of a 'box' to indicate equipment to light dark fiber is a desired service, since we believe, a complete paragraph included on the RFP is a far better method of describing required services and is sufficiently clear not to be missed by interested vendors.

The Commission may waive any provision of its rules on its own motion and for good cause

⁴ Madison_FY22_471_191039196-DF_RFCDL

⁵ Madison_FY21_470-Fiber WAN - #180015891 – PDF of submitted Form 470

⁶ RE_Madison_FY2018_Appeal - #132119 And Case # 273267 – EMAIL Chain

⁷ MCSD.WAN_2018-RFP

shown⁸. A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.⁹ Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule

CONCLUSION

It is our opinion that our appeal has not been addressed by USAC.

The Madison County School District respectfully requests that the FCC accept this letter of appeal and:

- enter an order setting aside the decisions of the Schools and Libraries Division (SLD) regarding the May 8, 2019 RFCDL to MCSD, specifically SLD's denial of FRN 1899084023, and
- enter an order instructing SLD:
 - I. Change the Service Provider from Southeastern Services, Inc. SPIN 143026053 to United Data Technologies, Inc. (UDT) SPIN 143020605
 - II. Waive the requirement to 'check the box' for the service of "lighting dark fiber".
 - III. Approve an adjusted commitment request of \$ 21,779.42

Should the Commission grant this appeal for waiver we ask that it also considers and allows for adjustment of Service Delivery and Invoicing Deadlines that are impacted by this appeal process.

Madison County School District further requests that the Commission grant to it all other relief to which it deems MCSD is entitled.

MCSD asks the Commission not to penalize its students and citizenry for the procedural errors discussed herein when no wrongful act has been committed or even contemplated.

Madison County School District appreciates the Commission's review and consideration of its appeal. We are available to respond to questions or to provide any further information requested by the Commission.

Authorized signature for this Appeal

John E. Harvey Jr.

Date: May 31, 2019

John E. Harvey Jr.
eRate 360 Solutions, LLC
322 Route 46W, Suite 280W
Parsippany, NJ 07054

Phone: (888) 535-7771 ext. 110
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⁸ Waiver of Rules_47 C.F.R. § 1.3.

⁹ Northeast Cellular Telephone Co., LP v. FCC



January 11, 2019

Funding Commitment Decision Letter

Funding Year 2018

Contact Information:

John Harvey Jr
 MADISON COUNTY SCHOOL DISTRICT
 210 NE DUVAL AVENUE
 MADISON, FL 32340
jharvey@erate360.com

FCC Form 471: 181017181

BEN: 127608

Wave: 40

Application Nickname: Madison_FY21_471-DF

Totals

Total Committed	\$80,985.58
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What is in this letter?

Thank you for submitting your application for Funding Year 2018 Schools and Libraries Program (E-rate) funding. Attached to this letter, you will find the funding statuses for the FCC Form(s) 471, Services Ordered and Certification Form, that you submitted and referenced above.

The Universal Service Administrative Company (USAC) is providing this information to both the applicant(s) and the service provider(s) so that all parties are aware of the post-commitment changes related to their funding requests and can work together to complete the funding process for these requests.

Next Steps

1. Work with your service provider(s) to determine if your bills will be discounted or if you will request reimbursement from USAC after paying the full cost for the services you receive.
2. Review the [Children's Internet Protection Act \(CIPA\)](#) requirements and file the [FCC Form 486](#) (Service Confirmation and CIPA Certification Form). **The deadline to submit this form is 120 days from the date of this letter or from the service start date (whichever is later).**



3. Invoice USAC

- **If you (the applicant) are invoicing USAC:** You must pay your service provider(s) the full cost for the services you receive and file the [FCC Form 472](#), the Billed Entity Applicant Reimbursement (BEAR) Form, to invoice USAC for reimbursement of the discounted amount.
- **If your service provider(s) is invoicing USAC:** The service provider(s) must provide services, bill the applicant for the non-discounted share, and file the [FCC Form 474](#), the Service Provider Invoice (SPI) form, to invoice USAC for reimbursement for the discounted portion of costs. Every funding year, service providers must file an [FCC Form 473](#), the Service Provider Annual Certification Form, to be able to submit invoices and to receive disbursements.
- **To receive an invoice deadline extension, the applicant or service provider** must request an extension on or before the last date to invoice. **If you anticipate, for any reason, that invoices cannot be filed on time**, USAC will grant a one-time, 120-day invoice deadline extension if timely requested.

How to Appeal or Request a Waiver of a Decision

You can appeal or request a waiver of a decision in this letter **within 60 calendar days** of the date of this letter. Failure to meet this deadline will result in an automatic dismissal of your appeal or waiver request.

Note: The Federal Communications Commission (FCC) will not accept appeals of USAC decisions that have not first been appealed to USAC. However, if you are seeking a waiver of E-rate program rules, you must submit your request to the FCC and not to USAC. USAC is not able to waive the E-rate program rules.

- **To submit your appeal to USAC**, visit the Appeals section in the [E-rate Productivity Center \(EPC\)](#) and provide the required information. USAC will reply to your appeal submissions to confirm receipt. Visit USAC's [website](#) for additional information on submitting an appeal to USAC, including step-by-step instructions.
- **To request a waiver of the FCC's rules**, please submit it to the FCC in proceeding number CC Docket No. 02-6 using the [Electronic Comment Filing System](#) (ECFS). Include your contact information, a statement that your filing is a waiver request, identifying information, the FCC rule(s) for which you are seeking a waiver, a full description of the relevant facts that you believe support your waiver request and any related relief, and any supporting documentation.

For appeals to USAC or to the FCC, be sure to keep a copy of your entire appeal, including any correspondence and documentation, and provide a copy to the affected service provider(s).



Obligation to Pay Non-Discount Portion

Applicants are required to pay the non-discount portion of the cost of the eligible products and/or services to their service providers. Service providers are required to bill applicants for the non-discount portion of costs for the eligible products and/or services. The FCC stated that requiring applicants to pay the non-discounted share of costs ensures efficiency and accountability in the program. If using the BEAR invoicing method, the applicant must pay the service provider in full (the non-discount plus discount portion) **before** seeking reimbursement from USAC. If using the SPI invoicing method, the service provider must first bill the applicant **before** invoicing USAC.

Notice on Rules and Funds Availability

The applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program and the FCC's rules. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake to assure that committed funds are being used in accordance with such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction of USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds.



Funding Commitment Decision Overview

Funding Year 2018

Application Comments for FCC Form 471: #181017181

The applicant did not submit any RAL corrections.

Funding Commitment Decision Overview

Funding Request Number (FRN)	Service Provider Name	Amount Requested	Amount Committed	Status
1899061146	Southeastern Services, Inc.	\$57,236.24	\$57,236.24	Funded
1899061209	Southeastern Services, Inc.	\$1,969.92	\$0.00	Cancelled
1899061270	Southeastern Services, Inc.	\$21,779.42	\$0.00	Cancelled
1899084023	Southeastern Services, Inc.	\$0.00	\$21,779.42	Funded
1899084817	Southeastern Services, Inc.	\$0.00	\$1,969.92	Funded



BEN Name: MADISON COUNTY SCHOOL DISTRICT **FCC Form 471:** 181017181
BEN: 127608 **Wave:** 40

FRN 1899061146	Service Type Data Transmission and/or Internet Access	Status Funded
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Dollars Committed			
Monthly Cost		One-time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$0.00	Total Eligible One Time Charges	\$63,595.82
Total Pre-discount Charges		\$63,595.82	
Discount Rate		90.00%	
Committed Amount		\$57,236.24	

Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	6/30/2019
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Funding Commitment Decision Comments

MR1: Approved as submitted.



BEN Name: MADISON COUNTY SCHOOL DISTRICT **FCC Form 471:** 181017181
BEN: 127608 **Wave:** 40

FRN 1899061209	Service Type Data Transmission and/or Internet Access	Status Cancelled
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Dollars Committed			
Monthly Cost		One-time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$2,188.80	Total Eligible One Time Charges	\$0.00
Total Pre-discount Charges		\$2,188.80	
Discount Rate		90.00%	
Committed Amount		\$0.00	

Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Funding Commitment Decision Comments

CR1: This FRN was canceled in order to change the answer to the Fiber question from No to Yes. The new FRN for the requested services is 1899084817.



BEN Name: MADISON COUNTY SCHOOL DISTRICT **FCC Form 471:** 181017181
BEN: 127608 **Wave:** 40

FRN 1899061270	Service Type Data Transmission and/or Internet Access	Status Cancelled
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Dollars Committed			
Monthly Cost		One-time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$0.00	Total Eligible One Time Charges	\$24,199.36
Total Pre-discount Charges		\$24,199.36	
Discount Rate		90.00%	
Committed Amount		\$0.00	

Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Funding Commitment Decision Comments

CR1: This FRN was canceled in order to change the service type. The new FRN for Switches and OSS services is 1899084023.



BEN Name: MADISON COUNTY SCHOOL DISTRICT **FCC Form 471:** 181017181

BEN: 127608

Wave: 40

FRN 1899084023	Service Type Data Transmission and/or Internet Access	Status Funded
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Dollars Committed			
Monthly Cost		One-time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$0.00	Total Eligible One Time Charges	\$24,199.36
Total Pre-discount Charges		\$24,199.36	
Discount Rate		90.00%	
Committed Amount		\$21,779.42	

Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	9/30/2019
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Funding Commitment Decision Comments

MR1: This is a new FRN. It was created in order to change the service type requested on FRN 1899061270 from Data Transmission and/or Internet Access--fiber to Data Transmission and/or Internet Access--switches and OSS in accordance with Program rules.



BEN Name: MADISON COUNTY SCHOOL DISTRICT **FCC Form 471:** 181017181
BEN: 127608 **Wave:** 40

FRN 1899084817	Service Type Data Transmission and/or Internet Access	Status Funded
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Dollars Committed			
Monthly Cost		One-time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$2,188.80	Total Eligible One Time Charges	\$0.00
Total Pre-discount Charges		\$2,188.80	
Discount Rate		90.00%	
Committed Amount		\$1,969.92	

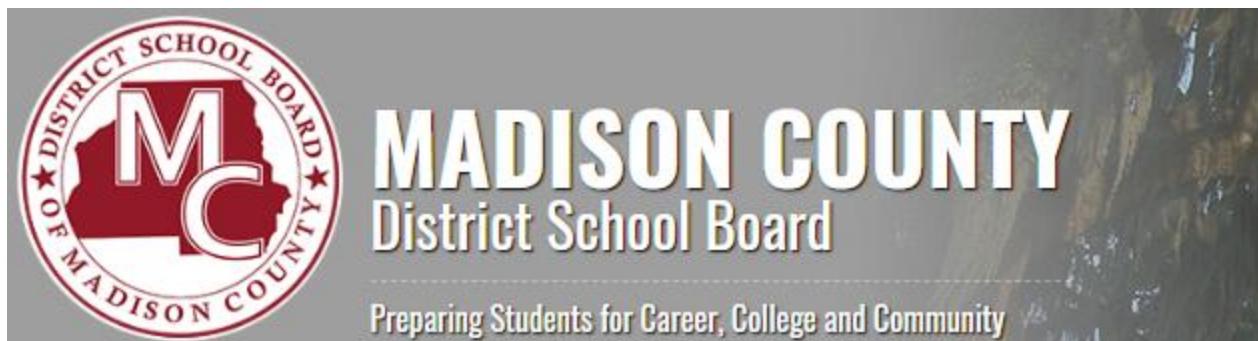
Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	6/30/2019
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Funding Commitment Decision Comments

MR1: This is a new FRN. It was created in order to change the Fiber Type and Subtype from Fiber/OC-192 as listed on FRN 1899061209 to Fiber Maintenance & Operations based on the supporting documentation.



MADISON COUNTY SCHOOL DISTRICT

Address: 210 NE Duval Avenue Madison, Florida 32340 - Phone: 850-973-5022

January 14, 2019

Letter of Appeal

Re: Funding Commitment Decision Letter for FY 2018 FCC Form 471 # 181017181.

Authorized person who can best discuss this Appeal with you

John E. Harvey Jr.
eRate 360 Solutions, LLC
322 Route 46W, Suite 280W
Parsippany, NJ 07054

Phone: (888) 535-7771 ext. 110
Fax: (866) 569-3019
Email: jharvey@erate360.com

Application Information

Entity
Billed Entity Number
Funding Year
Form 471 Application Number
Funding Request Numbers

MADISON COUNTY SCHOOL DISTRICT
127608
FY 2018
181017181
1899084023

Service Provider
SPIN
Funding Commitment Requested

Southeastern Services, Inc.
143026053
\$ 21,779.42

Document to Be Reviewed

**Funding Commitment Decision Letter for the FY 2018
FCC Form 471 Application Number 181017181, dated
January 11, 2019¹**

Decision to be reviewed

This is a new FRN. It was created in order to change the service type requested on FRN 1899061270 from Data Transmission and/or Internet Access--fiber to Data Transmission and/or Internet Access--switches and OSS in accordance with Program rules.

¹ Madison_FY21_471_181017181-DF_FCDL

Appeal:

Madison County School District (the District) requests that USAC correct a ministerial & clerical error made on the FCC Form 471 Application Number 181017181², for FRN # 1899061270. FRN # 1899084023 is a new FRN. It was created in order to change the service type requested on FRN 1899061270.

The Form 471# 181017181 with Certified Time stamp 20-Mar-2018 20:30:00 EDT was completed and submitted by me as the authorized Consultant for the District. However, in inputting the data I made a ministerial & clerical error when I filled in the Service Provider selected for FRN # 1899061270 as Southeastern Services, Inc. (SPN: 143026053). My contact at the District, Mr. Isaac Goyette conducted a thorough bid evaluation³, signed and dated the winning bid quote⁴ and provided all required documentation to support the selected service provider. These documents I have attached to this appeal. The correct Service Provider is **United Data Technologies (UDT) SPIN – 143026053**, see page 5 of the attached document “Madison-SSI_Dark Fiber Signed Quotes_w-o tax” which shows the signed UDT quote #30163-1, dated 3/19/2018 along with the signed Bid Evaluation forms showing that UDT was the chosen vendor.

Conclusion:

In keeping with USAC’s own rules which state;

“Applicants occasionally make data entry and other similar ministerial and clerical (M&C) errors on an FCC Form 470 or FCC Form 471. Applicants are generally allowed to contact USAC to correct those errors when they discover them unless the correction on the FCC Form 470 would materially affect the competitive bidding process.”

The District notes that:

- The bidding process was thoroughly conducted according to USAC’s rules.
- The vendor selection was correctly performed as supported by attached documents.
- The District requests the ministerial & clerical error be corrected and the newly created FRN 1899084023 in the amount of \$21,779.42 post discount, be approved to show United Data Technologies (UDT) SPIN – 143026053 as the chosen vendor on a revised FCDL.

Madison County School District appreciates USAC’s consideration of its appeal. We are available to respond to questions or to provide any further information requested by the USAC/SLD.

Authorized signature for this Appeal

John E. Harvey Jr.

Date: 1/14/2019

² Madison_FY21_471_181017181-DF_Certified

³ CAT1 Dark Fiber Signed Evals-w-o tax, page 2.

⁴ Madison-SSI_Dark Fiber Signed Quotes_w-o tax, page 5.

3-SPIN Contact Search Results-UDT

SLD Home

Site Map

Search Site

Contact SLD

Reference Area - Schools and Libraries Division

Reference

SPIN and BEAR Contact Search Results

Guidance on determining if a company is eligible to provide telecommunications services:

Form 499 Filer column indicates "Y":

- This service provider has successfully filed a Form 499 with USAC. Telecommunications providers with a "Y" are eligible to provide Telecommunications Services and Internet service providers with a "Y" are eligible to provide Interconnected Voice over Internet Protocol (VoIP) services.

All other designations:

- Some service providers that do not have a "Y" designation are eligible to provide Telecommunications Services because they meet [certain conditions](#) and are exempt from filing a [Form 499](#). You can [contact the Client Service Bureau](#) to determine if the company has met those conditions.

Form 499 Filer column indicates "X":

- This service provider has been researched by USAC and is **not** eligible to provide Telecommunications Services.

Form 499 Filer column indicates "Z":

- This service provider is currently being researched by USAC to determine if it is eligible to provide Telecommunications Services.

Form 499 Filer column is blank:

- This service provider has not been researched and its status is unverified.

Applicants are reminded that they should confirm this and all other information with the service provider.

Page 1 of 1
Results 1 - 1 of 1

SPIN	Service Provider Name	Doing Business As	Contact Name	Contact Address	Contact Phone	Form 499 Filer	SPAC Filed
143020605	United Data Technologies, Inc.		Gerard Amaro	8825 N.W. 21st Terrace , Doral, FL 33172	305882-0435		2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018

New Search

Done

Questions about the SLD Program? Call our Client Service Bureau at (888) 203-8100.



May 8, 2019

Revised Funding Commitment Decision Letter

Funding Year 2018

Contact Information:

John Harvey Jr
 MADISON COUNTY SCHOOL DISTRICT
 210 NE DUVAL AVENUE
 MADISON, FL 32340
jharvey@erate360.com

BEN: 127608**Post Commitment Wave:** 27**Totals**

Original Commitment Amount	\$21,779.42
Revised Commitment Amount	\$0.00

What is in this letter?

Thank you for submitting your post-commitment request for Funding Year 2018 Schools and Libraries Program (E-rate) funding. Attached to this letter, you will find the revised funding statuses and/or post commitment changes to the original Funding Commitment Decision Letter (FCDL) you received. Below are the changes that were made:

- Appeals

The Universal Service Administrative Company (USAC) is providing this information to both the applicant(s) and the service provider(s) so that all parties are aware of the post-commitment changes related to their funding requests and can work together to complete the funding process for these requests.

Next Steps

1. **File the FCC Form 486**, Service Confirmation and Children's Internet Protection Act (CIPA) Certification Form, for any FRNs included in this RFCDL, if you have not already done so. Please review the CIPA requirements and file the form(s).



BEN Name: MADISON COUNTY SCHOOL DISTRICT

BEN: 127608

Post Commitment Wave: 27

- o **If USAC approved funding on an FRN in your original FCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of the original FCDL or from the service start date (whichever is later).
 - o **If a new FRN was created for this RFCDL or funding was not approved on an FRN in your original FCDL but is approved in this RFCDL**, the deadline to submit the FCC Form 486 is 120 days from the date of this RFCDL or from the service start date (whichever is later).
2. **Invoice USAC**, if you or your service provider have not already done so. Work with your service provider(s) to determine if your bills will be discounted or if you will request reimbursement from USAC after paying your bills in full.
- **If you (the applicant) are invoicing USAC:** You must pay your service provider(s) the full cost for the services you receive and file the [FCC Form 472](#), the Billed Entity Applicant Reimbursement (BEAR) Form, to invoice USAC for reimbursement of the discounted amount.
 - **If your service provider(s) is invoicing USAC:** The service provider(s) must provide services, bill the applicant for the non-discounted share, and file the [FCC Form 474](#), the Service Provider Invoice (SPI) form, to invoice USAC for reimbursement for the discounted portion of costs. Every funding year, service providers must file an [FCC Form 473](#), the Service Provider Annual Certification Form, to be able to submit invoices and to receive disbursements.
 - **To receive an invoice deadline extension, the applicant or service provider** must request an extension on or before the last date to invoice. **If you anticipate, for any reason, that invoices cannot be filed on time**, USAC will grant a one-time, 120-day invoice deadline extension if timely requested.

How to Appeal or Request a Waiver of a Decision

You can appeal or request a waiver of a decision in this letter **within 60 calendar days** of the date of this letter. Failure to meet this deadline will result in an automatic dismissal of your appeal or waiver request.

Note: The Federal Communications Commission (FCC) will not accept appeals of USAC decisions that have not first been appealed to USAC. However, if you are seeking a waiver of E-rate program rules, you must submit your request to the FCC and not to USAC. USAC is not able to waive the E-rate program rules.

- **To submit your appeal to USAC**, visit the Appeals section in the [E-rate Productivity Center \(EPC\)](#) and provide the required information. USAC will reply to your appeal submissions to confirm receipt. Visit USAC's [website](#) for additional information on submitting an appeal to USAC, including step-by-step instructions.
- **To request a waiver of the FCC's rules or appeal USAC's appeal decision**, please submit it to the FCC in proceeding number CC Docket No. 02-6 using the [Electronic Comment Filing System](#) (ECFS). Include your contact information, a statement that your filing is a waiver request,



BEN Name: MADISON COUNTY SCHOOL DISTRICT

BEN: 127608

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identifying information, the FCC rule(s) for which you are seeking a waiver, a full description of the relevant facts that you believe support your waiver request and any related relief, and any supporting documentation.

For appeals to USAC or to the FCC, be sure to keep a copy of your entire appeal, including any correspondence and documentation, and provide a copy to the affected service provider(s).

Obligation to Pay Non-Discount Portion

Applicants are required to pay the non-discount portion of the cost of the eligible products and/or services to their service providers. Service providers are required to bill applicants for the non-discount portion of costs for the eligible products and/or services. The FCC stated that requiring applicants to pay the non-discounted share of costs ensures efficiency and accountability in the program. If using the BEAR invoicing method, the applicant must pay the service provider in full (the non-discount plus discount portion) **before** seeking reimbursement from USAC. If using the SPI invoicing method, the service provider must first bill the applicant **before** invoicing USAC.

Notice on Rules and Funds Availability

The applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Program and the FCC's rules. Applicants who have received funding commitments continue to be subject to audits and other reviews that USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with such requirements. USAC may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by USAC, the applicant, or the service provider. USAC, and other appropriate authorities (including but not limited to the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds.



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Revised Funding Commitment Decision Overview

Funding Year 2018

Funding Request Number (FRN)	Service Provider Name	Request Type	Revised Committed	Review Status
1899084023	Southeastern Services, Inc.	Appeals	\$0.00	Denied



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Post Commitment Request Number: 132119	Post Commitment Request Type: Appeals	Post Commitment Decision: Denied
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FRN: 1899084023	Service Type: Data Transmission and/or Internet Access	Original Status: Funded	Revised Status: Denied
FCC Form 471: 181017181			

Dollars Committed			
Monthly Cost		One-Time Cost	
Months of Service	12		
Total Eligible Recurring Charges	\$0.00	Total Eligible One Time Charges	\$24,199.36
Total Pre-Discount Charges		\$24,199.36	
Discount Rate		90.00%	
Revised Committed Amount		\$0.00	

Dates	
Service Start Date	7/1/2018
Contract Expiration Date	6/30/2023
Contract Award Date	3/19/2018
Service Delivery Deadline	9/30/2019
Expiration Date (All Extensions)	6/30/2028

Service Provider and Contract Information	
Service Provider	Southeastern Services, Inc.
SPIN (498ID)	143026053
Contract Number	
Account Number	
Establishing FCC Form 470	180015891

Consultant Information	
Consultant Name	John Harvey Jr
Consultant's Employer	E-Rate 360 Solutions, LLC
CRN	16048893

Revised Funding Commitment Decision Comments:

DR1: The FCC Form 470 that established the competitive bidding process for this FRN did not include service of this type; therefore it does not meet the 28 day competitive bidding requirement.

Post Commitment Rationale:

The FRN 1899084023 was denied during Fiber review because Network Equipment was not requested on the FCC Form 470 and RFP that established the competitive bidding process for this FRN. Your appeal did not show that USAC's determination was incorrect. Consequently, your appeal is denied. FCC rules require that all products and services for which an applicant requests discounts on an FCC Form 471 must be competitively bid on an FCC Form 470. The FCC Form 470 must include a complete description of the services for which discounts are sought, be



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posted on the website for 28 days, and applicants must carefully consider all bids received before selecting a vendor, entering into a legally binding agreement or signing a contract, and signing and submitting an FCC Form 471. See 47 C.F.R. secs. 54.503(b) and (c), 54.511(a). These competitive bidding requirements help to ensure that applicants receive the lowest pre-discount price from vendors. See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order on Reconsideration, 12 FCC Rcd 10095, 10098, FCC 97-246 para. 9 (rel. Jul. 10, 1997). To the extent an applicant seeks construction of a network that the applicant will own, the applicant must also solicit bids for both the services provided over third-party networks and construction of applicant owned network facilities, in the same request for proposals. Similarly, to the extent an applicant seeks bids for special construction associated with dark fiber or bids to lease and light dark fiber, the applicant must also solicit bids to provide the needed services over lit fiber. Additionally, to the extent an applicant seeks bids for equipment and maintenance costs associated with lighting dark fiber, the applicant must include these elements in the same FCC Form 470 as the dark fiber. See C.F.R. secs. 54.503 (c) (iv)-(vi).

4-Madison_FY22_471_191039196-DF_RFCDL - End

Madison_FY21_470-Fiber WAN - #180015891

[Summary](#) [Generated Documents](#) [News](#) [Related Actions](#)

Please note: The following fields pull the most current data from the Contact User Profile and Applicant Entity Profile: Recipient(s) of Service, Contact Name, and Contact Phone Number. If you would like to review this FCC Form 470 with the data that was present upon certification, please navigate to the Generated Documents related dashboard on the left-hand side and click the Original Version document link.

Application Information

Nickname	Madison_FY21_470-Fiber WAN	Created Date	1/16/2018 4:36 PM EST
Application Number	180015891	Created By	John Harvey Jr
Funding Year	2018	Certified Date	2/2/2018 1:39 PM EST
Status	Certified	Certified By	John Harvey Jr
Allowable Contract Date	3/2/2018	Last Modified Date	2/2/2018 1:39 PM EST
		Last Modified By	John Harvey Jr

Billed Entity Information

Name	MADISON COUNTY SCHOOL DISTRICT	Billed Entity Number (BEN)	127608
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Application Type and Recipients of Service

Applicant Type	School District	Number of Eligible Entities	8
Recipient(s) of Service	<input type="checkbox"/> Public School <input type="checkbox"/> Public School District		

Contact Information

Name	Isaac Goyette	Phone Number	850-973-1540
Email	isaac.goyette@madison.k12.fl.us		

Services Requested

Category 1: Internet Access and/or Telecommunications

Type	Function	Number Entities	Quantity	Unit	Min Capacity	Max Capacity	Installation and Initial Configuration?	Maintenance Indicator	Associated RFP
Internet Access and/or Telecommunications	Leased Dark Fiber	2	1	Fiber Strands	Detailed in RFP	Detailed in RFP	Yes	Yes	View RFP Documents
Internet Access and/or Telecommunications	Leased Lit Fiber	2	1	Circuits	10 Gbps	25 Gbps	Yes	Yes	View RFP Documents

Category One Narrative

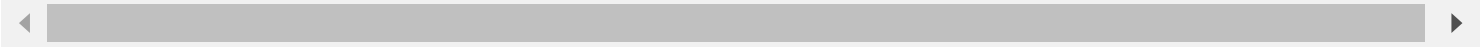
See RFP.
Provide Fiber WAN from Madison County Central School (2093 US Hwy 90, Madison, FL 32340) to Madison County High School. (2649 US Hwy 90, Madison, FL 32340)

There are no Services Requested For Category 2

Technical Contact Information

State or Local Procurement Requirements

State or Local Procurement Requirements have not been indicated



John Harvey

From: Takia Thornton <Takia.Thornton@usac.org>
Sent: Thursday, May 9, 2019 8:43 AM
To: John Harvey
Subject: RE: Madison_FY2018_Appeal - #132119 And Case # 273267

Good Morning John,

The case is still being worked on.

Thanks,

Takia Thornton

E-Rate

Schools & Libraries

Takia.thornton@usac.org | 956-435-8550

From: John Harvey [mailto:jharvey@erate360.com]
Sent: Tuesday, May 07, 2019 11:45 AM
To: Suzanne Lawson <Suzanne.Lawson@usac.org>
Cc: Radha Sekar <Radha.Sekar@usac.org>; Isaac Goyette <isaac.goyette@mcsbfl.us>; Takia Thornton <Takia.Thornton@usac.org>
Subject: RE: Madison_FY2018_Appeal - #132119 And Case # 273267
Importance: High

Suzanne, I thank you for looking into this situation. Is there any update yet?
Regards.

John E. Harvey Jr. CEMP*
Manager Appeals & Procedures.



eRate 360 Solutions, LLC

322 Route 46W, Suite 280W

Parsippany, NJ 07054

jharvey@erate360.com

Toll Free: 888-535-7771 **ext.110** (ext.210 for conf. bridge)

Cell: 973-946-3531

Fax: 866-569-3019

<http://www.erate360.com/>



*Certified E-Rate Management Professional.

From: Suzanne Lawson <Suzanne.Lawson@usac.org>
Sent: Wednesday, May 1, 2019 3:52 PM
To: John Harvey <jharvey@erate360.com>
Cc: Radha Sekar <Radha.Sekar@usac.org>
Subject: FW: Madison_FY2018_Appeal - #132119 And Case # 273267

Good afternoon, John

I write on behalf of Radha Sekar to confirm that we are investigating the situation that you have brought to our attention. We hope to have clarity on the matter in order to respond more fully to you tomorrow.

Thank you for your patience.

Best regards

Suzanne

Suzanne Lawson
Chief of Staff
Universal Service Administrative Co. (USAC)
700 12th Street NW, Suite 900
Washington, DC 20005
(202) 263-1639 (ph)
suzanne.lawson@usac.org | www.usac.org

From: Radha Sekar
Sent: Monday, April 29, 2019 1:28 PM
To: John Harvey; Catriona Ayer
Cc: Takia Thornton; Isaac Goyette; Bert Garofano; Suzanne Lawson
Subject: RE: Madison_FY2018_Appeal - #132119 And Case # 273267

Thanks John. We will find out the details and get back to you.
Radha

Sent with BlackBerry Work
(www.blackberry.com)

From: John Harvey <jharvey@erate360.com>
Date: Monday, Apr 29, 2019, 1:20 PM
To: Radha Sekar <Radha.Sekar@usac.org>, Catriona Ayer <Catriona.Ayer@usac.org>
Cc: Takia Thornton <Takia.Thornton@usac.org>, Isaac Goyette <isaac.goyette@mcsbfl.us>, Bert Garofano <ugarofano@erate360.com>
Subject: FW: Madison_FY2018_Appeal - #132119 And Case # 273267

Re - #127608 - MADISON COUNTY SCHOOL DISTRICT

Madison_FY2018_Appeal - #132119 And Case # 273267

Dear Ms. Sekar,

I apologize for filling up your email with this matter, however on behalf of my Client at Madison CSD, I'm seeking your assistance. I don't know who else to turn to!

I'm unable to obtain progress with this fairly straightforward FY2018 fiber project.

The review began 6/27/2018.

An FCDL was issued 01/11/2019. However due to an M&C error the wrong Service Provider was approved.

On 1/11/19, CSB informed me that once the FCDL has been issued, I would need to appeal the decision to have the SP corrected.

I submitted an appeal on 1/14/2019. Simply to correct/change the service provider to match the originally provided contract and documentation. (I don't know why it was approved in the first place when the information did not match.)

As of today's date the EPC portal has shown this appeal to be "In review"!

In the email chain below, you can see the Appeal Reviewer contacted me on March 15, 2019. I responded to her (via phone call) by reading directly from my appeal letter (attached) which clearly stated what was the M&C error. She then advised me that she had all required information to complete the review.

Since no decision had been received and the 471 Window was closing on 3/27/19, I decided to resubmit the original application for FY2019, as a back-up in case the appeal was not successful for any reason. Nine days later, on 4/5/19, I received a request for information on the newly submitted application, asking if it was a duplicate of a previously approved FCDL

Since I was also told that the appeal is in its final stage (see Appeal case response attchd.) and that I would receive a decision "soon" – I have sought to delay responding to the new review until the appeal decision is issued approved. But today I received a denial of my extension request!

I'm sure you can see how frustrating this is!

I am being requested to respond in a timely manner to the reviewer's request, while at the same time I'm awaiting a decision on an application that began eleven months ago!

An appeal to correct one item of data supported by original documents takes 4 ½ months to process – is this what should be accepted?

Please help.

Regards.

John E. Harvey Jr. CEMP*
Manager Appeals & Procedures.



eRate 360 Solutions, LLC

322 Route 46W, Suite 280W
Parsippany, NJ 07054

jharvey@erate360.com

Toll Free: 888-535-7771 **ext.110** (ext.210 for conf. bridge)

Cell: 973-946-3531

Fax: 866-569-3019

<http://www.erate360.com/>



**Certified E-Rate Management Professional.*

From: Takia Thornton <Takia.Thornton@usac.org>

Sent: Wednesday, April 17, 2019 12:45 PM

To: John Harvey <jharvey@erate360.com>

Subject: RE: Madison_FY2018_Appeal - #132119

Hello John,

The appeal has been sent to the next stages of the review process.

Thanks,

Takia Thornton

E-Rate

Schools & Libraries

Takia.thornton@usac.org | 956-435-8550

From: John Harvey [<mailto:jharvey@erate360.com>]

Sent: Wednesday, April 17, 2019 9:29 AM

To: Takia Thornton <Takia.Thornton@usac.org>

Subject: RE: Madison_FY2018_Appeal - #132119

Importance: High

Takia – I left a voice message for you re this Appeal status. Please, please, please! Let me know the status. When will the RFCDL be issued? The EPC portal still shows 'Status

Your application is under review.'

John E. Harvey Jr. CEMP*

Manager Appeals & Procedures.



eRate 360 Solutions, LLC

322 Route 46W, Suite 280W

Parsippany, NJ 07054

jharvey@erate360.com

Toll Free: 888-535-7771 **ext.110** (ext.210 for conf. bridge)

Cell: 973-946-3531

Fax: 866-569-3019

<http://www.erate360.com/>



SHLB
SCHOOLS, HEALTH & LIBRARIES
BROADBAND COALITION

**Certified E-Rate Management Professional.*

From: Takia Thornton <Takia.Thornton@usac.org>

Sent: Friday, March 15, 2019 12:59 PM

To: John Harvey <jharvey@erate360.com>

Subject: Madison_FY2018_Appeal - #132119

Hi John,

I need to know what ministerial & clerical errors need to be corrected. The documents didn't show exactly what needed to be corrected.

Thanks,

Takia Thornton

E-Rate

Schools & Libraries

Takia.thornton@usac.org | 410-907-2552

The information contained in this electronic communication and any attachments and links to websites are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering this communication to the intended recipient, be advised you have received this communication in error and that any use, dissemination, forwarding, printing or copying is strictly prohibited. Please notify the sender immediately and destroy all copies of this communication and any attachments.

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Madison County School District
E-Rate 2018-2019
WAN Fiber Replacement

BID SUBMISSION

Completed bid packets should be submitted by email to Isaac Goyette at isaac.goyette@madison.k12.fl.us. Please ensure you receive a confirmation email that your bid was received.

QUESTIONS

Questions concerning this project should be submitted by email to Isaac Goyette at isaac.goyette@madison.k12.fl.us. Please ensure you receive a confirmation email that your question was received. Responses to questions will be provided on addenda.

ADDENDA

From time to time, addenda's may be issued for this proposal. Any such addenda will be posted on the same website from which you obtained this proposal. You should periodically check the USAC website to download any addenda, which may have been issued

SITE VISIT

A Site visit is not required. However, if a vendor desires to have a site visit, one can be arranged by emailing Isaac Goyette at isaac.goyette@madison.k12.fl.us.

DUE DATES

All completed bid packets are due by 11:59 PM on March 14, 2018. Proposals received after the noted due date and time will be disqualified. Bid packets will be opened and scored on March 15, 2018. It is the Vendor's responsibility to ensure the Madison County School District receives documents according to proposal specifications. We are not responsible for delivery systems – internal or external.

SCOPE OF SERVICES

Madison County School District is requesting proposals for leased lit fiber and leased dark fiber services for delivery of wide area network (WAN) services to the district. The current WAN services are provided by district owned fiber, but enhanced fiber services are now required to support rapidly growing bandwidth needs and to meet the State Education Technology Directors Association standard recognized in the FCC Second E-rate Modernization order as the benchmark standard for bandwidth for school districts.

- Service is expected to be delivered from the district hub, the Madison County High School at 2649 US Hwy 90, Madison, FL 32340
 - Demarcation Point: Room 304
- Service is expected to be delivered to the eligible service locations from the district hub at the following locations:
 - Eligible Entity 1, the Madison County Central School at 2093 US Hwy 90, Madison, FL 32340
 - Demarcation Point: Room 212

The new service is being planned to begin on July 1, 2018.

Madison County School District is seeking two options for fiber bids. Respondents may bid either or both options. **All respondents must be capable of providing telecommunication services under the Universal Service Support Mechanism, be a registered vendor with USAC, and have a USAC issued 498 ID (formerly Service Provider Identification Number-SPIN).**

1. The first option is a fully managed, leased lit fiber solution. One-time special construction should be bid separately from the monthly recurring cost for the fully managed leased service.
2. The second option is for a leased dark fiber solution that includes special construction, the monthly lease fee, and maintenance. One-time special construction costs should be bid separately from the monthly lease fee. Maintenance fees can be included in the monthly lease fee.
3. For any leased dark fiber solutions, we also require necessary network equipment to place fiber into service. Equipment should be bid separately from any fiber services.

Madison County School District will consider traditional network designs (such as hub and spoke) or alternative proposals that, in accordance with E-rate guidance, maximize cost effectiveness. Respondents should clearly illustrate proposed network design and construction routes. Madison County School District is not advocating or mandating any preconceived network design or construction route and leaves this decision up to the vendor to present their best solution while recognizing the cited termination locations. Madison County School District owns a road and the included right of way that connects from Madison County High School to Madison County Central School. The vendor may elect to use this right of way in their construction route.

In E-rate terminology, **special construction** refers to the upfront, non-recurring costs associated with the installation of new fiber to or between eligible entities. If no new fiber is being installed, then any installation costs are considered standard **non-recurring costs (NRC)**. Applicants may seek funding for special construction charges in connection with leased lit fiber, leased dark fiber, and self-provisioning. Special construction charges eligible for Category One support consist of three components:

1. construction of network facilities
2. design and engineering
3. project management

Note: The term "special construction" does not include network equipment necessary to light fiber, nor the services necessary to maintain the fiber. Charges for network equipment and fiber maintenance are eligible for Category One support as separate services, but not as special construction.

All options can include special construction or one-time E-rate eligible non-recurring costs as well as E-rate eligible recurring circuit costs. To the extent that the winning service provider installs additional strands of fiber for future business ventures, the winning service provider assumes full responsibility to ensure those incremental costs are allocated out of the special construction charges to the district in accordance with FCC rules and orders. If, after the issuance of the FCDL, USAC or the FCC determines that the winning service provider did not cost allocate those charges associated with the additional strands, Madison County School District will not be responsible for reimbursing the winning vendor and the winning vendor will assume all responsibilities deemed ineligible by USAC.

Based on the bids and both a short term and long term cost effectiveness analysis, Madison County School District will determine which, if any, of the leased lit service, leased dark fiber, or some

combination of solutions is acceptable. The specifications related to each solution option are as follows.

Leased Lit Fiber

Madison County School District must have dedicated, symmetrical transport bandwidth of 10 Gbps with Service Level Agreement (SLA) guarantees between the designated endpoints. The solution must be scalable to 30 Gbps with 10 Gbps cost increments. Price quotes are requested for 12 month, 36 month and 60 month terms of service. Each respondent is required to complete the leased lit fiber pricing matrix located in Appendix A of this RFP. If special construction is necessary, respondents are **required** to separate out pricing in Appendix B: Special Construction Pricing. No increased pricing will be allowed during the term of the quoted special construction, NRC, and MRC rate in each pricing cell of the matrix. If an increase in bandwidth is requested during the contract period the contract does not renew. As bandwidth needs are steadily rising, respondents are free to bid higher tiers of bandwidth than what is requested to demonstrate their future scalability.

Leased Dark Fiber

As an alternative, respondents can quote a leased dark fiber network solution from the specified hub to the eligible service locations. The price quote should be for a lease of four (4) strands (2 pair) of single-mode fiber from the hub to each eligible entity location for 36 month or 60 month terms of service. Each respondent is required to complete the leased dark fiber pricing matrix located in Appendix A of this RFP. If special construction is necessary, respondents are **required** to separate out pricing in Appendix B: Special Construction Pricing.

Fiber Maintenance Terms and Conditions

Madison County School District requires on-going maintenance of the fiber on all leased dark fiber solutions. Maintenance responses are required as follows:

- All leased dark fiber responses require maintenance as part of the response, even if maintenance is subcontracted out to a third party. In the case of the 3rd party maintenance, the respondent must hold and manage the subcontract and is ultimately responsible for the SLA. The respondent will include only the portion of maintenance that is required to support the Madison County School District fiber segments versus overall network maintenance. If the fiber serves multiple customers, the cost of maintenance should be shared among all the recipients. It is assumed that maintenance costs are included in the monthly lease fee.
- Respondent shall maintain the applicable fiber seven days per week, twenty-four hours per day. Upon notification from the district of a malfunction relating to the applicable fiber, respondent shall respond to such malfunction within two (2) hours and thereafter proceed to correct the malfunction with reasonable diligence. When pricing maintenance, the respondent should include an overview of maintenance practices including:
 - Routine maintenance and inspection
 - Scheduled maintenance windows and scheduling practices for planned outages
 - Marker and handhole inspection and repair
 - Handling of unscheduled outages and customer problem reports
 - What service level agreement is included and what alternative service levels may be available at additional cost
 - What agreements are in place with applicable utilities and utility contractors for emergency restoration
 - Repair of fiber breaks
 - Mean time to repair
 - Replacement of damaged fiber
 - Post repair testing

- Replacement of fiber that no longer meets specifications
- Policies for customer notification regarding maintenance
- Process for changing procedures, including customer notification practices
- Process for moves, adds, and changes
- Process for responding to locate requests

Network Equipment for Leased Dark Fiber

Madison County School District is also seeking bids for necessary network equipment to place circuits into service at 10Gbps once leased dark fiber is available. Network equipment should be Cisco Meraki MS425-32 with license and SFPs or equivalent. Pricing information, as well as manufacturer and model, should be included in Equipment pricing matrix of Appendix A. Network equipment for leased dark fiber may be bid as a stand-alone service by anyone, even if they are not bidding on any fiber service. Please note that respondents submitting a fiber proposal may also bid on equipment provided they bid them separately and do not bundle equipment costs with their fiber proposal.

General Terms for All Proposals

Description of Proposal

Respondent will provide a description of their proposal for all services and solutions. Description will include an overview of the proposal, any deviations from the requested architecture, design or requirements, assumptions made, and other detail Madison County School District may find useful or necessary (or could differentiate the solution from a competing proposal).

Additional Terms

Madison County School District reserves the right to reject any and all proposals or decide to not proceed with the project entirely.

Madison County School District reserves the right to conduct contract negotiations with the winning bidder on details beyond what is specified in the RFP.

Madison County School District reserves the right to move to next bidder if contract negotiations aren't concluded to district's satisfaction.

Madison County School District reserves the right to adjust the timeline and/or ask additional questions of bidders based on initial responses.

Service Level Agreement

The respondent will provide a proposed service level agreement (SLA) with the RFP response. The proposal must include a description of the following services and how these services will be measured.

- Fiber Network Availability: the provider will make all reasonable efforts to ensure 99.99% network availability of each circuit.
- Leased lit fiber proposals only:
 - .25% frame/packet loss commitment
 - 25ms network latency commitment
 - 10ms network jitter commitment
 - There is no right of provider to limit or throttle the capacity of the circuit at any time for any reason

In addition to the required services, the proposal may include but is not to be limited to the following services:

- Network operations center: Solution will provide customer support functions including problem tracking, resolution and escalation support management on a 24x7x365 basis. Customer has the right and is encouraged to call concerning any problems that may arise

- relative to its connection with vendor provided services.
- Trouble reporting and response: Upon interruption, degradation or loss of service, Customer may contact Vendor by defined method with a response based on trouble level. Upon contact from the Customer, the Vendor support team will initiate an immediate response to resolve any Customer issue. Customer will receive rapid feedback on trouble resolution, including potential resolution time.
- Escalation: In the event that service has not been restored in a timely manner, or the Customer does not feel that adequate attention has been allocated, the Customer can escalate the trouble resolution by request. A list of escalation contacts will be provided when implementation schedule is completed.
- Resolution: The Customer will be notified immediately once the problem is resolved and will be asked for verbal closure of the incident.
- Trouble reporting, escalation and resolution: A detail trouble reporting, escalation and resolution plan will be provided to the district.
- Measurement: Vendor stated commitment is to respond to any outage within two (2) hours and a six (6) hour restoration of service. Time starts from the time the Customer contacts vendor and identifies the problem. Credits for outages of shortage will be identified.
- Reports: Upon request, an incident report will be made available to the Customer within five (5) working days of resolution of the trouble.
- Link performance per segment: The service will maintain the proposed link performance throughout the term of the contract.
- Historical uptime: Provide aggregate uptime statistics for your proposed service in the geographic area encompassing Madison County School District.

Timeline

For each response, respondents must include a timeline for all bringing all sites online and an explanation of how much they are able to adhere to Madison County School District's specified timeline. Respondents with existing infrastructure in the area should be able to bring all sites online by the July 1 start of the funding year.

Demarcation

All solutions whether leased lit fiber or leased dark fiber must terminate service or infrastructure in the demarcation point at each address specified in this RFP. Solutions bringing service to the property line but not to the demarcation point are not acceptable. Respondent must specify specific demarcation setup included in base fees, e.g. wall mounted CPE and CAT6a handoff, rack mount patch panel, etc.

Network Diagram

For each response, respondents must include a network diagram displaying the paths to be used to serve each endpoint.

References

For each response, respondent must provide 3 references from current or recent customers (preferably K-12) with projects equivalent to the size of Madison County School District. If respondent responds to more than one option (e.g. leased lit fiber service as well as leased dark fiber), provide 3 references for each.

Special Construction Payment Plan Option

The applicant requests that the respondents consider allowing Madison County School District to pay the non-discount share of special construction costs (portion of costs that are the responsibility of the applicant) to be paid in equal annual installments over two years from

Funding Year 2018 to Funding Year 2020 inclusive. Responses must include agreement or non-agreement of this request.

Special Construction Information for Form 471 and PIA Review

All E-rate applications including special construction are subject to detailed questioning during PIA review where the cost of proposed special construction will be reviewed based on the cost of historical fiber builds in the region. Additionally, certain information on necessary special construction is needed to accurately fill out the Form 471. Respondents are **required** to fill out the table in Appendix B. Additionally, respondents are encouraged (but not required) to submit the additional information described in Appendix B that will likely be requested during PIA review. If respondents do not submit this additional information with their bid, and their solution is chosen, they must be prepared to promptly provide that information and any additional information not described in this RFP when requested. Please note that vendors may assist applicants with preparing funding requests or responding to PIA questions and may speak directly with PIA reviewers.

Required Notice to Proceed and Funding Availability

Madison County School District will follow the purchasing policies of the Madison County School District Board and requirements and procedures of the FCC's E-rate program as administered by the Universal Service Administrative Company to be eligible for all available funding. The implementation of any associated contracts resulting from this competitive bid process will be dependent on the district's issuance of a written Notice to Proceed. E-rate funding notification alone will not signify Notice to Proceed. The district will have the right to allow the contract to expire without implementation if appropriate funding does not come available.

E-rate Modernization Order Note

Special construction and service eligibility for reimbursement have changed starting funding year 2016. See the Federal Communications Commission E-rate modernization order 2 (WC Docket No. 13-184) (<https://www.fcc.gov/document/fcc-releases-order-modernizing-e-rate-21st-century-connectivity>) for more information.

RFP Scoring Rubrics

Leased Lit Fiber, Transport, Leased Dark Fiber, Leased Dark Fiber (IRU), Self-Provisioned

% Weight	Criteria
20%	E-rate eligible recurring and one-time circuit costs*
15%	Ability to support requirements as laid out in the RFP
15%	Proposed contract terms and conditions
10%	Service Reliability
10%	E-rate ineligible recurring or one-time costs
10%	Demonstrated scalability of technology through pricing for higher tiered bandwidths
10%	Provider references
10%	Complete bid submission

Network Equipment

% Weight	Criteria
50%	E-rate eligible costs*
40%	Compatibility with existing network infrastructure
10%	E-rate ineligible costs

*this element must always be the highest weighted in each rubric

Appendix A: MRC/NRC Cost Tables

Leased Lit Fiber

		Eligible Monthly Recurring Cost			Ineligible monthly recurring cost	Eligible install/non-recurring cost	Ineligible install/non-recurring cost
Location	Bandwidth	1-year contract	3-year contract	5-year contract			

Leased Dark Fiber

	Eligible Monthly Recurring Cost		Ineligible monthly recurring cost	Eligible install/non-recurring cost	Ineligible non-recurring cost
Location	3-year contract	5-year contract			

Equipment for Leased Dark Fiber

Location	Manufacturer	Model	Eligible cost	Ineligible cost

Appendix B: Special Construction Pricing

Required with all bid submissions that include special construction

Location	Strand Count	Segment Mileage	Total Segment Cost	Eligible Cost	Ineligible Cost
Total project mileage and costs					

Information that can be included now, but will be requested at a later date for chosen solution:

- Special construction cost breakout worksheet
- Route map of all build segments in kmz format
- Explanation of alternative routes that were explored and why the chosen route is the most cost-effective
- Explanation of special materials and procedures required that may have increased construction costs, such as:
 - Historical preservation or environmental issues
 - Bridge, waterway, railway, or highway crossings
 - Galvanized conduit
 - Directional boring through hard rock or under a paved surface
 - An excessive number of handholes, marker posts, or other OSP materials
 - Expensive pole attachment fees or make ready costs

8-Waiver of Rules_47 C.F.R. § 1.3.



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Title 47: Telecommunication
PART 1—PRACTICE AND PROCEDURE
Subpart A—General Rules of Practice and Procedure

§1.3 Suspension, amendment, or waiver of rules.

The provisions of this chapter may be suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.

CROSS REFERENCE: See subpart C of this part for practice and procedure involving rulemaking.

[Need assistance?](#)

897 F.2d 1164 (1990)

NORTHEAST CELLULAR TELEPHONE COMPANY, L.P., et al., Petitioners,
v.
FEDERAL COMMUNICATIONS COMMISSION, Respondent.

Nos. 89-1206, 89-1214.

United States Court of Appeals, District of Columbia Circuit.

Argued February 5, 1990.

Decided March 9, 1990.

Rehearing Denied May 9, 1990.

Alan Y. Naftalin, Washington, D.C., with whom Robert M. Connolly, Louisville, Ky., was on the brief, for petitioner, Northeast Cellular Telephone, L.P., in No. 89-1206. Harold J. Carroll and Susan D. Baer, Boston, Mass., were on the brief, for petitioner, Saco River Cellular, Inc., in No. 89-1214.

Roberta L. Cook, Atty., F.C.C., Washington, D.C., with whom Robert L. Pettit, Gen. Counsel, and Daniel M. Armstrong, Associate Gen. Counsel, F.C.C., Washington, D.C., were on the brief, for respondent.

Michael B. Barr, Bruce D. Peterson, Washington, D.C., and John S. Parks, were on the brief, for intervenor, Portland Cellular Partnership.

Before MIKVA, EDWARDS and SILBERMAN, Circuit Judges.

Rehearing En Banc Denied May 9, 1990.

Opinion for the Court filed by Circuit Judge MIKVA.

MIKVA, Circuit Judge:

1165 This case presents a procedural challenge to an FCC order granting a license to a cellular radio lottery winner, Portland Cellular Partnership ("Port Cell"). The losers *1165 in that lottery, Northeast Cellular Telephone Co. ("Northeast") and Saco River Cellular, Inc. ("Saco River"), claim that the FCC arbitrarily and capriciously waived the requirement that lottery winners establish their financial qualifications within 30 days of having been selected. We hold that the FCC's waiver decision was arbitrary and capricious because it was not based on any rational waiver policy as required by our decision in WAIT Radio v. FCC, 418 F.2d 1153 (D.C.Cir.1969). Indeed, given the record in this case, we cannot imagine any standard that would have justified a waiver of the filing of Port Cell's financial qualifications. Accordingly, we vacate the waiver and remand the case to the agency.

I. BACKGROUND

In 1986, the FCC held a lottery for a license to operate cellular radio service in Portland, Maine. Five applicants entered the lottery: Northeast, Saco River, NYNEX Mobile Communications Company ("NYNEX Mobile"), Community Services Telephone Co. ("Community Services"), and Seacoast Cellular, Inc. ("Seacoast"). Seacoast was tentatively selected as the licensee, with Saco River picked as runner-up.

As a result of a settlement agreement, Seacoast substituted for its own application the application of Portland Cellular Partnership ("Port Cell") which consisted of itself (42% interest), NYNEX Mobile (48% interest) and Community Service (10% interest). Port Cell's ownership has since been divided equally among NYNEX, Seacoast, and Lewiston-Auburn Cellular.

Under FCC rules, Port Cell was required within 30 days of selection to submit evidence of its financial qualifications to operate the system. *Cellular Further Lottery Reconsideration Order*, 59 Pike and Fischer Rad.Reg.2d 407 (1985). Those rules require the lottery winner to present evidence that the lender has (1) committed to provide all necessary financing; (2)

identified sufficient unencumbered funds; (3) assessed the applicant's creditworthiness; and (4) dictated the essential terms of the loan. 47 C.F.R. § 22.917(b)(1)(i) (1986). If the selected applicant fails to satisfy these requirements, the applicant is disqualified and the second-place applicant is substituted as the tentative lottery selectee. 59 Pike and Fischer Rad.Reg. at 413.

On July 24, Port Cell tendered a letter of credit from NYNEX Credit Company ("NYNEX Credit") in satisfaction of the financial qualifications requirement and a balance sheet that estimated Port Cell's costs of construction and operation at \$2.8 million. The letter of credit confirmed that NYNEX was "prepared to make available to [Port Cell] a total credit package of \$3 million." The letter, however, did not include any evidence that NYNEX Credit had assessed Port Cell's creditworthiness or agreed to any terms or conditions of the financing arrangement.

Saco River and Northeast (the only remaining lottery participants) petitioned the Commission to deny Port Cell's application on two grounds. First, they claimed that Port Cell had failed to demonstrate its financial qualifications because the NYNEX letter did not establish that the credit package was guaranteed, that the essential terms were set, that NYNEX had assessed Port Cell's creditworthiness, or that NYNEX had sufficient capital. Second, they asserted that the FCC had prejudiced their settlement opportunities by permitting two co-owned applicants — Seacoast and Community Service — to remain in the same lottery.

These claims were denied by the Mobile Services Division of the Commission ("MSD"). *Portland Cellular Partnership*, 2 FCC Rcd 5586 (1987). Saco River and Northeast filed petitions for review with the FCC, which the Commission also denied. *Portland Cellular Partnership*, 4 FCC Rcd 2050 (1989). The Commission found that even though Port Cell had failed to comply with the FCC rules with respect to financial qualifications, the Commission would waive those qualifications because strict enforcement was not in the public interest. The Commission found that based on its prior dealings with NYNEX Credit, it was confident that NYNEX met all of the necessary qualifications. It determined that strict compliance would not serve any interest, and would only result in unnecessary delay. The Commission also rejected the cross-ownership claim.

Northeast and Saco River have appealed both the waiver and cross-ownership decisions. Because we find that the case must be remanded on the basis of the waiver decision, we need not reach the cross-ownership issue.

II. WAIVER OF FINANCIAL QUALIFICATIONS

There is no question here that Port Cell has failed to comply strictly with regulations requiring that it demonstrate its financial qualifications. The FCC concluded that the NYNEX letter was defective under § 22.917(b)(1)(i) because it did not contain the terms of the loan or state that NYNEX had assessed the creditworthiness of the loan applicant. 4 FCC Rcd at 2050. The Commission nevertheless concluded that there was good cause to waive the specific requirements of the rule because the Commission knew from its "lengthly [sic] experience" with NYNEX Mobile and from "materials on file in other [FCC] proceedings" that Port Cell was financially capable of constructing and operating its proposed cellular system. *Id.* at 2051.

Apparently, the Commission concluded that because of the relationship between NYNEX Credit and NYNEX Mobile, NYNEX Mobile's role as a general partner in Port Cell, and NYNEX Mobile's proven interest in participating in the cellular industry, it was not unreasonable to assume that the funds were available for Port Cell's venture. From this, the Commission would have the court infer that the FCC's familiarity with NYNEX's credit practices was sufficient to demonstrate that NYNEX had assessed the creditworthiness of the loan applicant and that the loan terms would follow a standard pattern.

The FCC has authority to waive its rules if there is "good cause" to do so. 47 C.F.R. § 1.3. The FCC may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C.Cir. 1969). However, as we instructed in *WAIT Radio*, those waivers must be founded upon an "appropriate general standard." We held that "sound administrative procedure contemplates waivers ... granted only pursuant to a relevant standard ... [which is] best expressed in a rule that obviates discriminatory approaches." 418 F.2d at 1159.

In remanding *WAIT Radio* to the agency to formulate an acceptable waiver policy, we held that a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation. See also *Industrial Broadcasting*,

Co. v. FCC, 437 F.2d 680 (D.C.Cir.1970) (indicating need for articulation of special circumstances beyond those considered during regular rulemaking).

The FCC purports to have complied with *WAIT Radio* in granting its waiver to Port Cell. Yet, it has not even come close to doing so. The FCC Order concluded that waiver under these circumstances would serve the public interest contemplated by the financial requirements provisions. It reasoned that if there is "no speculation" as to the financial qualifications of the tentative selectee, strict enforcement will not serve the regulation's purpose of reducing delays in cellular service. 4 FCC Rcd at 2050-51.

The FCC's reasoning wholly ignores the second requirement of *WAIT Radio*: It does not articulate any standard by which we can determine the policy underlying its waiver. The FCC's reliance upon a bare conclusion that there is "no speculation" with respect to Port Cell is astounding. The record reveals nothing unique about Port Cell's situation. This is a case where a very experienced applicant that was clearly aware of the rule, submitted two financial showings which patently did not
1167 comply with that rule. The only thing unusual about Port Cell is that one of its *1167 partners is universally recognized as fiscally strong and technically qualified. The Commission's recognition of Port Cell's financial qualifications, then, amounts to nothing more than a "we-know-it-when-we-see-it" standard.

In *Airmark Corp. v. FAA*, 758 F.2d 685 (D.C.Cir.1985), this court vacated several waivers for failure to articulate identifiable standards. The FAA had published rules requiring compliance with five criteria to qualify for an exemption; however, it had granted such exemptions only haphazardly. We ruled that "[e]lementary evenhandedness requires that if all five factors must be met by one petitioner, then all five factors must be met by the next." *Id.* at 692. The difficulty presented here is even more striking, since the FCC has not simply deviated from exemption standards; it never stated any standards in the first place.

The only factor stated by the FCC that differentiates Port Cell from any other applicant is the FCC's undefined "familiarity" with one of Port Cell's partners and Port Cell's financial backer. Standing alone, this does not even begin to approach a standard for demonstrating that a licensee is "indisputably ... financially qualified" and thus not required to provide a full statement of financial qualifications. Although the FCC purports to have had vast experience with NYNEX in other markets and contexts, the Commission provides no indication of what aspects of that experience are dispositive, or how those aspects relate to the financial qualifications of Port Cell. As noted, NYNEX is only a minority partner in Port Cell. Thus, whether NYNEX Mobile or its parent NYNEX have been worthy licensees in other markets would not be sufficient to confirm Port Cell's qualifications. Indeed, taking the Commission at its word, it would seem that any organization most likely could avoid producing financial qualifications by bringing a Bell Operating Company in as a 5% partner.

Under the Commission's blanket statement, future applicants — and this court — have no ability to evaluate the applicability and reasonableness of the Commission's waiver policy. At a minimum, the FCC needed to indicate what information it had about NYNEX Credit's uncommitted assets, NYNEX Credit's practices in evaluating the creditworthiness of loan applicants, the terms it would imply into NYNEX Credit's loan letter based upon its prior experience, and its basis for concluding that NYNEX Credit would commit funds regardless of whether NYNEX Mobile abandoned the partnership. Absent a finding that this information was considered and used in formulating an articulable standard at the time the waiver was granted, the FCC must disqualify Port Cell's application.

Despite the Commission's assurances that there is no speculation involved in its decision to excuse Port Cell from strict compliance, its statement invites nothing but speculation by all other participants in FCC proceedings. Mere conclusory statements as to the unique reputation and experience of Port Cell's lender and minority partner are not sufficient to satisfy the requirements of *WAIT Radio*.

III. CONCLUSION

We hold that the FCC's decision was arbitrary and capricious because it was not based on any rational waiver policy. The agency failed to state any legitimate basis for granting Port Cell a waiver from the Commission's financial qualifications requirements. Bigness and national reputation are not reasonable standards for a waiver policy, and the Commission indeed eschews such a characterization of its policy. It follows that this waiver reflects an outrageous, unpredictable, and unworkable policy that is susceptible to discriminatory application. Accordingly, the petition for review is granted, and the Commission's order is vacated and remanded.

So Ordered.

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